



**Environmental Water Program Steering  
Committee Briefing Paper No. 9.**

**EWP Pilot Water Acquisition Program  
Preliminary Evaluation Factors**

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# Table Of Contents

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INTRODUCTION.....	1
DISCUSSION OF CONSIDERATIONS .....	1
NEXT STEPS.....	8

Follows Page

Figure 1    Phases of the Pilot Water Acquisition Program.....	1
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## INTRODUCTION

The CALFED agencies intend to begin implementation of the Environmental Water Program (EWP) through a series of pilot water acquisitions. These acquisitions are referred to as the EWP Pilot Water Acquisition Program (PWAP). The process for implementing the PWAP, described in the PWAP work plan (Environmental Water Program—Pilot Program Work Plan) and in Figure 1, Phases of the Pilot Water Acquisition Program, involves a number of steps leading to the development of prioritization criteria and the selection of pilot acquisitions. One of the first steps in this process is to develop a set of selection considerations, factors to be thought through during establishment of the prioritization criteria.

In addition to providing environmental benefits, each PWAP acquisition is intended to help guide the CALFED agencies in formulating the EWP framework by answering questions regarding the institutional aspects of program implementation. Therefore, in deciding where, when, and how much water to acquire in the first round of the PWAP, the EWP will assess a broad range of factors in addition to scientific considerations such as biological priorities.

This paper presents a list of preliminary evaluation factors and describes why they are relevant and important.

There are five general categories of evaluation considerations:

- Coordination with related programs
- Specifics of water acquisition proposals
- Science
- Institutional hypotheses
- Funding

Each consideration is described below, including a discussion of why it is relevant and important. At this point in the process, CALFED seeks to ensure it has identified all of the relevant considerations. The relative priority of these considerations will be addressed as the next step in the process.

## DISCUSSION OF CONSIDERATIONS

### Coordination with Related Programs

#### Definition

Both the CALFED agencies and interested stakeholders have indicated a desire both to coordinate with and to consider the goals and objectives of other water management programs when implementing the EWP. Coordination with other programs is of top priority. As outlined

in EWP Briefing Paper No. 2 (Summary of Coordinating Programs), the program managers recognize the benefits of coordination. This coordination can increase the efficiency of each acquisition by providing multiple benefits and can reduce administrative expenses and duplicative effort. The EWP has coordinated and will continue to coordinate its efforts with the efforts of a number of programs, listed below. Because program goals are similar, the CALFED agencies expect to concentrate coordination efforts with other environmental water acquisition programs.

- Environmental Water Acquisition Programs
  - Central Valley Project Improvement Act (CVPIA) Water Acquisition Program (WAP)
  - CALFED Environmental Water Account (EWA)
  - Nongovernmental Organization (NGO) Water Acquisition Programs
- Water Management Programs
  - CALFED Ecosystem Restoration Program (ERP)
  - CALFED Water Transfer Program
  - CALFED Watershed Program
  - CALFED Water Use Efficiency (WUE) Program
  - CALFED Integrated Storage Investigation
  - CALFED Operations Group and Water Operations Management Team
  - State and Federal Short-Term Dry-Year Water Acquisition Programs
  - Integrated Water Management Program (Phase 8 Agreement)
- Other Programs
  - CALFED Science Program
  - CALFED Environmental Justice Work Group
  - ERP Independent Science Board

## Discussion

Although coordination with other programs has been identified as a desirable goal, many questions remain about how this coordination should occur. In particular, program managers must work out a number of details regarding how partnerships between the EWP and other programs to acquire water jointly can be successfully planned and implemented. Among the details to be worked out are how the involved parties will share costs (of both the acquisition and of project staffing); how to complete environmental documentation (if necessary); how the parties will perform contract preparation and administration; how results will be monitored (and who will be responsible for such monitoring); and who will own and manage acquired water.

Therefore, when evaluating a potential pilot water acquisition, EWP managers will first consider the acquisition's potential to meet the goals of the EWP and Ecosystem Restoration Program Plan (ERPP). Once it is satisfied that the acquisition will meet these goals, program managers will consider the potential of that acquisition to:

- meet the goals and objectives of other environmental water acquisition programs, which could allow for teaming opportunities;
- provide experience that will assist in answering questions regarding how partnerships between the EWP and other programs can successfully be implemented;
- be carried out in a manner that is consistent with the goals and objectives of other water management programs, which could allow for teaming opportunities and the use of acquired water for multiple objectives; and
- meet the goals and objectives of the CALFED program as a whole, which will require coordination with other CALFED programs.

## **Specifics of Water Acquisition Proposals**

### **Definition**

EWP Briefing Paper No. 8 (Preliminary Analysis of Water Transfer Types) preliminarily describes various potential sources of water for acquisitions and the advantages, disadvantages, and limitations of each. Ultimately, this will lead to a program-wide policy regarding what sources of water will be acceptable to acquire and under what circumstances. In the future, Briefing Paper No. 8 will be expanded to explore other aspects of water rights and develop policy regarding these aspects. Evaluating potential acquisitions against these policies will be an important step in deciding which opportunities to pursue. A discussion of these issues related to water rights is provided below.

### **Discussion**

When analyzing potential water acquisitions, the EWP must consider several factors related to specific proposed acquisitions:

- the source of the water being offered,
- the type of water right associated with the water for sale,
- the seniority of the water right,
- the validity of the water right,
- the duration of the proposed acquisition, and
- the water year types during which the water is being offered.

### **Source of Water**

EWP program managers, with the assistance of agencies and stakeholders, intend to develop a policy that defines where geographically, under what conditions, and with what limitations or mitigation each water source type should be considered. By using a varied strategy

that diffuses impacts geographically and by socioeconomic sector and includes of appropriate mitigation for potentially adverse impacts, EWP managers expect to develop a successful water acquisition program that is acceptable to local interests as well as participating state and federal agencies. Each potential water acquisition must be evaluated to determine whether it is consistent with this policy.

### **Type of Water Right**

Briefing Paper No. 5 (Introduction to Water Rights and Water Transfers) provides an overview of the basics of water rights and water transfer law. Various types of water rights exist in California, and each has different rights and limitations associated with it. The EWP also intends to develop a policy regarding the type of water rights that are preferable for acquisition.

### **Seniority of Water Right**

An important consideration regarding environmental water acquisitions is how to protect the acquired water from diversion by others. One consequential factor in protecting acquired water is the seniority of the water right relative to other downstream diverters. Therefore, the seniority of the water right should be a substantial factor to consider in evaluating potential acquisitions.

### **Validity of the Right**

As described in Briefing Paper No. 5, not all water rights on paper are enforceable or available in reality. An important consideration in evaluating proposed water acquisitions will be the validity of the right. The absolute validity of the right can be established with a water right appraisal, but the validity can also be judged at a gross level of detail prior to the appraisal. An examination of historical diversion rates and a history of prior transfers can be used to make this gross assessment.

### **Duration of Acquisition**

The length of the time of proposed acquisitions is a very important consideration. EWP managers have stated a preference for acquiring water for long periods of time to reduce administrative costs and to ensure long-term environmental flows. Further, extended periods of time will be needed to monitor the biological and ecological effects of increased flows. Therefore, it is expected that longer-term transfers will tend to be given preference over short-term transfers. However, in circumstances where partnerships with other programs such as the EWA could provide large amounts of flow on important stream reaches during a biologically significant time period, a short-term acquisition could be deemed of high priority.

### **Water Year Types**

Some water will be offered for transfer only during certain water year types (e.g., only during wet periods, or only during dry periods). In other cases, water may be offered in all year types. It is expected that water offered in all years would be preferred to water offered only in

dry years, which would be preferred to water offered only in wet years. However, there may be circumstances when water offered in wet years only provides benefit in important stream reaches during biologically significant time periods. Because it would be offered during a wet year, the water would likely also be lower in cost. In this instance, the wet year water could be of high priority.

## **Science**

### **Definition**

When considering a potential EWP acquisition, the EWP managers will evaluate how the proposal fits in with EWP and ERPP biological and ecological goals, and the potential of the proposed acquisition to provide answers to the most important scientific questions established by the CALFED Science Program and ERP Independent Science Board.

### **Discussion**

The U.S. Fish and Wildlife Service is nearing the publication of a draft methodology for determining priorities for water acquisitions to improve conditions for anadromous fisheries. This methodology should provide guidance to the EWP regarding those streams that have the highest potential for such improvement. Because the EWP will be implemented using an adaptive management approach, these priorities will not serve as a road map for EWP implementation, but will provide a starting point.

The CALFED agencies will be funding an investigation to determine where additional flows could contribute to the health of a stream by returning certain geomorphological functions to the stream. The results of that investigation will also be considered in determining which acquisitions to pursue.

Finally, one of the goals of the PWAP is to increase the knowledge of the biological and ecological benefits of increasing flows. The CALFED Science Program and the ERP Independent Science Board will be providing the EWP managers with a set of the highest priority questions to be answered by the EWP. Therefore, the potential to assist in answering the key questions will be an important consideration in evaluating potential acquisitions. Factors that contribute to this consideration include the availability of historical information to serve as a basis for a scientific inquiry, the suitability of conditions on the stream to collect data, and the presence of conditions that would allow investigation of key questions.



## **Institutional Hypotheses**

### **Definition**

As mentioned earlier, one of the goals of the PWAP is to provide information about institutional barriers that may hinder program implementation and how to overcome them. Therefore, potential EWP pilot acquisitions will be evaluated for their potential to answer questions about the institutional aspects of EWP implementation. This could include how best to structure partnerships with other programs, how to achieve multiple benefits from single acquisitions, how to protect water once it is acquired, how best to complete regulatory processes such as obtaining an instream water right under Section 1707 of the California Water Code, and how to mitigate some of the known impacts of certain types of acquisitions.

### **Discussion**

#### **Acquisition Partnerships**

The CALFED agencies intend to test the success of EWP acquisitions done in partnership with other agencies and private parties (e.g., NGOs) through the PWAP. In partnering, the CALFED agencies must consider the other programs' goals and objectives and how they mesh with those of the EWP. The CALFED agencies must also consider:

- who will make decisions,
- how funding for acquisitions and for staffing and management of the acquisition effort will be allocated between the partners,
- how contracts will be let and by whom,
- who will own and manage the acquired water,
- who will be responsible for conducting scientific monitoring and analysis, and
- how to evaluate the success of the partnership.

EWP managers are currently working with WAP and EWA program managers to more fully define institutional considerations and hypotheses for partnered acquisitions with the EWP. The EWP hopes to develop similar relationships with private entities and other CALFED programs (e.g., WUE) in the near future.

#### **Multiple Objectives**

Both the CALFED agencies and stakeholders have indicated a desire to have EWP water meet multiple objectives. This includes having water acquired by the EWP serve multiple purposes (e.g., after acquired water is used for instream benefit, use by another party for another

purpose downstream) and having EWP use water made available through other processes or programs to meet EWP objectives. Through the PWAP, the EWP managers intend to develop and test hypotheses regarding achievement of multiple objectives. Therefore, potential acquisitions will be evaluated as to their potential to provide multiple benefits.

## **Protection of Water**

Acquisition and application of environmental water alone do not necessarily guarantee legal protection of that water. The EWP intends to test ways to protect acquired water, including but not limited to using Section 1707 of the California Water Code. Section 1707 has not yet been widely tested; program managers hope to go through the process in one of the initial EWP acquisitions. In selecting potential pilot acquisitions, then, the EWP managers will consider the applicability of Section 1707 or of other means to protect acquired water, both in the short term and in perpetuity.

## **Testing Mitigation Strategies**

As noted above, the EWP team intends to work with the EWA Team in forming mitigation strategies in advance of program-level EWP National Environmental Policy Act/California Environmental Quality Act documentation. By doing this, the EWP will be able to test the success of strategies tailored to specific types of acquisitions and specific locations. When reviewing potential acquisitions, then, the CALFED agencies must consider the opportunity to test the various mitigation approaches, the probability of success of each strategy, and lessons it expects to learn from the application.

## **Funding**

### **Definition**

Two considerations in evaluating potential water acquisitions are associated with money. The first is any restrictions or limitations associated with funding sources that pay for the water, the second is the price of the water.

### **Discussion**

#### **Funding Restrictions or Limitations**

The CALFED agencies have not identified a sustained source of funding to support the EWP. Initially, the program will likely operate using annual allocations of public funds. Ultimately, however, the agencies must consider a number of funding options, such as funding from water users, through partnerships with other CALFED and non-CALFED programs, or through a cash reserve. In some cases, funding sources contain restrictions or limitations on how

or where the money can be used. When reviewing potential acquisitions, EWP managers will have to look closely at existing and potential funding sources, consider potential restrictions or limitations associated with each, and determine whether hypotheses and program goals and objectives can be met given the funding environment. The first round of pilot water acquisitions is likely to be funded using the approximately \$9 million in federal funds that has been allocated for this purpose. Before these funds are used, however, the CALFED agencies must investigate whether these funds have any limitations or restrictions.

### **Price of Water**

It is important to recognize that, given a fixed amount of available funding, the more the water costs, the less water that can be acquired. The price of water can be affected by year type (e.g., water would likely be more expensive during dry years), source (e.g., water that has to be pumped a long distance is more expensive), locational conditions (e.g., regional amounts of available surface and groundwater may affect the price of water in that particular region), and other activity in the water market (e.g., competing water acquisition programs). For each acquisition, the EWP managers will need to compare the cost of proposed water with the potential benefits to determine whether the acquisition is appropriate.

### **NEXT STEPS**

Identification of considerations is the first step toward development of criteria for the selection of potential acquisitions. Once the list of considerations is complete, the considerations can be prioritized and converted into evaluation criteria.